IN THE HIGH COURT OF BOMBAY AT GOA
***

WRIT PETITION NO. 358 OF 2002

Smt. Deepika D. Solanki,
housewife, r/o
Bepquegal, Curchorem, Goa. ... Petitioner.

Vrsus

Menino Fernandes, h/o
Philomena Fernandes, near
the bridge, Quepem, Goa. ... Respondent.

Shri Sudin Usgaokar, advocate for the petitioner.

Shri C. A. Coutinho, advocate for the respondent.

CORAM : F. I. REBELLO, J.

DATE :24th July, 2003.

ORAL JUDGMENT

Rule. Respondents waive service. Heard forthwith.

The trial Court by the impugned order struck off the defence by the petitioner on failure to comply with the order of deposit.

The Order of the court records that the petitioner was orally notified through her counsel why her defence should not be struck off. On behalf of the petitioner her learned counsel gave an undertaking that the arrears of monthly consideration would be paid in three instalments of Rs.10,000/- each and recurring monthly consideration of Rs.700/-. The Court further records that the matter was placed for second instalment plus recurring monthly sum for the recurring month on 10th October, 2000, when the Court

was informed about the inability to pay the second instalment. The matter was kept till 5.30 p.m. The matter was fixed for the next date on which date though the petitioner was represented, the amount was not deposited and the court was moved for striking of the defence and in these circumstances the Court struck off the defence.

2. When the revision was filed before this Court, the petitioner has deposited the entire arrears till the revision was withdrawn. Consequent to the amendment of Section 115 of the C.P.C. the Civil Revision Application was withdrawn and the present Writ Petition came to be filed. No further amounts have been paid deposited in those proceedings. Really speaking, the order of the trial Court does not suffer from error apparent. However, considering the records and the contention raised, in my opinion, the interests of justice would be made if the impugned Order is set aside and an opportunity is given to the petitioner to comply with the Orders of the Court directing deposit of arrears and regular payment of the monthly compensation due and payable.

In the light of that the following order:-

The impugned Order dated 11th October, 2000, is set aside on the condition that the petitioner deposits the entire balance amount, which is due and payable before the

trial Court within thirty days from today and thereafter continue to pay the regular monthly compensation on due date on or before the 10th day of every month, for which the compensation is due and payable. On failure to comply with the order for deposit, the revision will stand dismissed. On depositing the amount, the revision will stand allowed.

3. It is made clear that if there are any further defaults it will be open to the trial Court to proceed according to law and pass appropriate order, including under Order XV of the C.P.C. The petitioner is directed to pay costs to the respondent. Costs quantified at Rs.500/- as a condition precedent within four weeks from today. The amounts deposited in Civil Revision Application no.172/2001 be paid to the respondent without any security.

F. I. REBELLO, J.

mc.